

WHAT IS SECURITY OF PAYMENT?

There has been a lot of recent publicity about security of payment in the building industry. Master Builders director Michael McLean explains what security of payment means for building industry businesses.

SECURITY of payment is all about ensuring that everyone involved in a building project gets paid their due entitlements. This includes builders getting paid by homeowners/clients; specialist contractors like bricklayers, concretors, roof carpenters, cabinetmakers, electricians, plumbers and painters getting paid by builders; building material suppliers being paid by the builder or specialist contractor; and specialist sub-contractors (brick cleaners or labourers) being paid by specialist contractors (bricklayers or stonemasons).

In the vast majority of cases everyone gets paid in accordance with their contract and in a timely manner. However, there are occasions when the payments owed to one party are not paid on time or are disputed for a variety of reasons.

Everyone in the contractual chain has a legal and moral entitlement to be paid on time for their services rendered. The Construction Contracts Act was introduced in Western Australia in 2004 to ensure that this happened and provide a process to deal with disputed or delayed payment claims. This mechanism is known as rapid adjudication.

Regrettably, with a downturn in WA's economy, several builders have gone broke for a variety of reasons, which has resulted in a number of specialist contractors not being paid. As you can imagine, this has caused a lot of grief for builders, specialist contractors and product suppliers alike.

The McGowan Government established an Industry Advisory Group headed up by barrister Mr John Fiocco to investigate these issues and come up with meaningful solutions by the end of October. Master Builders is one of about 15 industry and professional organisations involved in this

exercise.

At a national level, the federal government appointed John Murray AM to review the security of payment legislation that exists in every state and territory. The purpose of this review was to identify legislative best practice, with a view to improving consistency in security of payment legislation and the level of protection afforded to sub-contractors to ensure they obtain payment for work they have completed or for goods and services they have supplied. Mr Murray has completed this assignment with a 350-page report comprising 86 recommendations.

Master Builders' response to the Murray Report supports a security-of-payment regime based on the following principles;

- A framework that is fair to all parties with minimal complexity;
- Cash flow to sub-contractors is protected, but not to the detriment of builders faced with incomplete or defective works;
- Security of payment laws should operate in a way that companies, especially small businesses, are prevented from being forced into insolvency;
- Any regime mandating payment claim trust arrangements carefully considers processes already in place under construction contracts and any complexity and costs associated with mandating such arrangements down the supply chain; and
- Any changes to security of payment laws do not impact adversely upon productivity and should limit the need for further regulatory burden.

In conjunction with lawyers Jackson McDonald, Master Builders has launched a 'Get Paid Quick' app to assist both builders and sub-contractors to access the rapid adjudication of their payment claims online.



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